



Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-003917

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bloomberg v. The Owners, Strata Plan BCS1074*, 2018 BCCRT 399

B E T W E E N :

Sam Bloomberg

APPLICANT

A N D :

The Owners, Strata Plan BCS1074

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a small claims dispute about payment of \$3,136 for electrical services the applicant, Sam Bloomberg, provided to the respondent, The Owners, Strata Plan BCS1074. The applicant is self-represented. The respondent is represented by David Thiele, a strata council member.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because while there are inconsistencies in the evidence about the respondent's instructions to the applicant, I find I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282. I find an oral hearing is not required.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is to what extent, if any, the respondent owes the applicant for the claimed outstanding electrical and carpentry charges.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
8. It is undisputed that the applicant had previously done certain jobs for the respondent strata corporation (strata). The applicant says the strata, through its former council president Barry Dow, agreed to hire and pay him for electrical work in the strata's parking garage.
9. The applicant says the work in question was done between October 2015 and December 26, 2015, with the knowledge and approval of both Mr. Dow and Geoff Lloyd, the owner and managing broker of the strata's former property management firm. The applicant began work after he received the keys to the garage, and he worked in the evening to avoid car fumes and interruptions.
10. The applicant says in the Dispute Notice Mr. Dow asked him to upgrade and replace as necessary 142 fluorescent lights and ballasts, which the applicant says cost \$4,136.12. Elsewhere, the applicant describes this work as replacing all underground lighting from T12 fluorescent to T8, including all ballasts.
11. The applicant says he received only \$1,000 (in the form of 2 separate \$500 cheques dated May 10 and June 2, 2016), and thus claims the \$3,136.12 balance. The applicant says the strata's then Treasurer (now Vice President), Calvin Paul, co-signed the cheques to the applicant along with Mr. Dow. Based on the photos of the cheques, I agree it is likely Mr. Paul's signature below Mr. Dow's.
12. The applicant says Mr. Dow promised payment, but the second cheque, which was for \$2,000 and dated March 29, 2016, was returned and not honoured. That cheque was also signed by Mr. Dow and Mr. Paul.
13. Mr. Dow passed away in June or July of 2016.

14. On August 7, 2016, the applicant issued his invoice to the strata, for a total of \$4,136.12, with a net balance owing of \$3,136.12, the amount claimed in this dispute. The invoice took into account the 2 payments of \$500 each. It also noted the returned \$2,000 cheque that was included in the balance owing. The invoice details 72 bulbs in total of 6 different types, at \$55 each. There is an added \$176.12 charge for a “door closer” and installation.
15. On September 23, 2016, the strata refused to pay the applicant.
16. The respondent says it can find no documentation that the strata ever hired the applicant for the garage lighting work. It also says that Mr. Dow was not authorized to hire the applicant for this work, which it says is supported by the fact the applicant provided multiple versions of his invoices for the same work, which the applicant allegedly told the strata’s current property manager was done “to make it easier for [Mr. Dow] to get payment approved by others on council”. The strata relies on section 30(2) of the *Strata Property Act* (SPA) and says the applicant therefore knew or ought to have known that the applicant did not have the strata’s authorization to do the work in question.
17. The evidence in support of the applicant’s position that he had proper authorization to do the work is as follows:
 - a. *February 19, 2015 strata council meeting minutes*, noted that “the lighting upgrade” should proceed, though there was no specific reference to the garage.
 - b. *January 27, 2016 strata council meeting minutes*, at which council President Mr. Dow was present: “Deferred maintenance to the underground lighting systems involving new fluroescent tubes and ballasts has now been completed”.
 - c. *May 26, 2016, strata council meeting minutes*, noting various improvements, including “maintenance lighting” – spot lights, pot lights, and barn lights, for a

total of \$3,035.00. However, it does not appear these lights specifically refer to the garage lights at issue in this dispute.

18. However, I find the most persuasive evidence that the applicant had authority to the work is the fact that Mr. Dow and Mr. Paul signed cheques paying the applicant. I do not accept the strata's argument that the applicant ought to have known Mr. Dow was not authorized by the rest of the council to approve the applicant's work. The existence of multiple invoices does not prove that. Both Mr. Dow and Mr. Paul signed the 2 \$500 cheques for the work at issue, as well as the \$2,000 cheque that was returned as NSF (not sufficient funds). Mr. Paul is the strata's current Vice President. The applicant knew about Mr. Dow's and Mr. Paul's roles in the strata and reasonably understood they were authorized to approve his work.
19. The respondent provided Mr. Paul's June 13, 2018 statement to the tribunal. He says in 2015 Mr. Dow had retained the applicant to "replace a few burned out lights" on the common property exterior, the parkade, and the garbage room, as well as other miscellaneous maintenance work. Mr. Paul does not say that work was formally approved by the strata council, but he does acknowledge that he signed the cheques to the applicant in 2015 and 2016. Mr. Paul says he thought those cheques were for the work described at the outset of this paragraph. Mr. Paul says "to the best of my recollection", the strata council never approved the replacement of all underground lighting in its parkade nor does he recall the council approving a price of \$55 per unit. I find Mr. Paul's recollection somewhat speculative and not determinative. I find it is reasonable to conclude that Mr. Dow had instructed the applicant to proceed and applicant reasonably proceeded. The applicant can rely on Mr. Dow's authority and the exception in section 30(2) of the SPA does not apply.
20. A cheque is a "promise to pay" (see for example, *Shama Plumbing & Heating Ltd. v. Star Properties Inc.*, 2015 BCSC 1156, and *British Columbia (Attorney-General) v. British Columbia Sugar Refining Company*, 1931 CanLII 335 (BC CA)). I find

there is insufficient evidence to support a conclusion the \$2,000 was written by mistake, to the extent the respondent may suggest that. I find the strata promised to pay the applicant \$2,000, when it sent the March 29, 2016 cheque signed by authorized signatories Mr. Dow and Mr. Paul. To the extent the respondent alleges fraud or misrepresentation (although those words were not used), I find such allegations are not proven. On the basis of the cheque that was returned NSF, I find the strata owes the applicant \$2,000, plus pre-judgment interest under the *Court Order Interest Act* (COIA), from March 29, 2016.

21. What about the \$1,136 balance of the applicant's claim? The respondent produced a number of the applicant's invoices dating back to 2015 and early 2016. The respondent says there are inconsistencies among the invoices. The fact that the strata received the applicant's invoices in 2015 and early 2016, without objection until after Mr. Dow passed away, is support for the conclusion that the strata at the material time had authorized the work. However, one example of the inconsistencies arising from the evidence is that the lights in the parkade do not match the type the applicant says he installed. Another example is that the applicant has provided various invoices, seemingly for the same work product, and yet the amounts outstanding differ. These may be innocent calculation errors, but the applicant bears the burden of proof and he has not explained them. I find the applicant has not proven he is entitled to the \$1,136 balance due to those inconsistencies. He had an opportunity to reply to those concerns, but he did not do so.
22. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was partially successful, I find he is entitled to reimbursement of half his \$125 in tribunal fees, namely \$62.50.

ORDERS

23. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,101.01, broken down as follows:

- a. \$2,000 for the applicant's claimed debt,
 - b. \$38.51 in pre-judgment interest under the COIA, and
 - c. \$62.50 in tribunal fees.
24. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest under the COIA.
 25. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
 26. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair